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Attorneys for Plaintiff
GLADYS GUTIERREZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GLADYS GUTIERREZ,
Plaintiff,
v.
TRUE POSITION et al.,
Defendants.

No. C 07 05899 CRB

JOINT CASE MANAGEMENT STATEMENT

Date: March 7, 2008
Time: 8:30 a.m.
Courtroom 8, 19th Floor
Honorable Charles R. Breyer, Presiding

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

1. Jurisdiction and service: This action was removed from state court based on alleged diversity of citizenship. See Defendants' Notice of Removal. The individual defendants have not been served because they have not yet been located. One of the discovery issues will be the citizenship of the individual defendants which may affect jurisdiction in this case.

2. Facts:

A. Plaintiff: Plaintiff Gladys Gutierrez is a young woman from the Phillippines who worked at Defendant True Position, Inc. ("TruePosition") through Defendant S.Com, Inc.

1 (“S.Com”), a temporary agency. Plaintiff began her employment with True Position and
2 S.Comm in September 2006. She served as an office administrator in True Position’s office in
3 Pleasanton, California. Plaintiff alleges that she was subjected to a constant barrage of sexual
4 and national-origin based harassment and discrimination during her tenure with Defendants.
5 When she complained, she was immediately terminated in retaliation.

6 **B. Defendants:**

7 1. TruePosition

8 Defendant TruePosition denies that Plaintiff was subjected to any sexual and national
9 origin-based discrimination during her brief assignment with TruePosition. In November
10 2006, Plaintiff emailed management at TruePosition about one, single incident which occurred
11 almost two months prior. Plaintiff was immediately advised to submit a formal complaint,
12 which was properly escalated through TruePosition to the Director and the legal department.
13 Further, TruePosition conducted a prompt investigation of Plaintiff’s complaint which
14 revealed facts inconsistent with the alleged wrongdoing reported by Plaintiff.

15 TruePosition further denies that Plaintiff was the subject of retaliation. Plaintiff was a
16 temporary employee engaged as an independent contractor to support TruePosition’s
17 temporary field office. Plaintiff was advised that the office in which she worked would be
18 closed and that her position would be eliminated in December 2006.

19 2. S.Com

20 Defendant S.Com denies that Plaintiff was subjected to sexual and national-origin
21 based harassment during her employment. Plaintiff complained about a couple of isolated
22 incidents involving coworker James Hudgens. Upon receipt of this complaint, S.Com
23 immediately launched an investigation. The investigation revealed that there were no
24 witnesses to support Plaintiff’s claims about Mr. Hudgens. Moreover, the isolated incidents
25 about which Plaintiff complained, even if true, did not create a hostile work environment for
26 Plaintiff. Plaintiff was not terminated in retaliation for her complaints about harassment. On
27 the contrary, Plaintiff was a temporary employee assigned to a particular project in Pleasanton,
28 California. Plaintiff’s assignment ended when the project was completed.

1 **3. Legal Issues:** Whether Plaintiff was subjected to unlawful sexual harassment,
2 national origin-based harassment and discrimination under California’s Fair Employment and
3 Housing Act (“FEHA”); whether Plaintiff’s termination constitutes unlawful retaliation under
4 FEHA; whether Plaintiff is entitled to compensatory damages, including amounts for
5 emotional distress, back pay and benefits, punitive damages and attorneys fees.

6 **4. Motions:** Plaintiff may file a motion to remand this case to state court depending on
7 information to be obtained in Initial Disclosures and discovery concerning the citizenship of
8 the individual defendants, Chris Lopez, James Hudgens, Jansen Cruz Perez and Chris Lapham.
9 Defendants intend to file motions for summary judgment.

10 **5. Amendment of Pleadings:** At this time, the parties do not anticipate amending the
11 pleadings.

12 **6. Evidence Preservation:** Plaintiff’s counsel has instructed Plaintiff to preserve all
13 relevant documents. Plaintiff requests that Defendants preserve all documents, including all
14 emails and drafts which refer or relate to Plaintiff’s complaint of harassment or any
15 investigation of Plaintiff’s complaint. Defendants TruePosition and S.Com have identified
16 individuals likely to possess evidence reasonably relevant to the issues of this action and have
17 distributed directives to these individuals to retain such evidence.

18 **7. Disclosures:** The parties are in the process of making initial disclosures in
19 accordance with the requirements of Fed. R. Civ. P. 26. Counsel for Plaintiff is specifically
20 requesting disclosure of documents and information pertaining to Defendants’ internal
21 investigation of Plaintiff’s sexual harassment complaint, as well as last known addresses of the
22 individual defendants.

23 **8. Discovery:** Discovery has not yet commenced pending initial disclosures. Counsel
24 for both parties have agreed that Plaintiff will appear for a portion of her deposition prior to
25 mediation. Counsel will also discuss what other discovery is appropriate prior to mediation.

26 **9. Class Actions:** Not applicable.

27 **10. Related Cases:** No related cases

28 **11. Relief:** Plaintiff seeks compensatory damages for emotional distress and lost

1 earnings, the amounts to be determined following discovery. In addition, Plaintiff seeks
2 punitive damages, attorneys' fees and costs. These damages are provided for under FEHA,
3 Calif. Gov. Code Section 12940 *et seq.*

4 **12. Settlement and ADR:** Counsel for all parties have agreed to private mediation
5 after initial disclosures and limited discovery is completed.

6 **13. Consent to Magistrate Judge for All Purposes:** The parties are not in agreement
7 regarding consent to have a magistrate judge conduct all further proceedings including trial
8 and entry of judgment. .

9 **14. Other References:** Not applicable.

10 **15. Narrowing of Issues:** Plaintiff anticipates that issues can be narrowed by
11 agreement and will consider whether the presentation of evidence at trial can be expedited
12 through stipulated facts. Plaintiff does not request bifurcation of any issues or claims.
13 Defendant TruePosition states that there are presently no dispositive or partially dispositive
14 issues appropriate for decision by motion or by agreement.

15 **16. Expedited Schedule:** Plaintiff believes this is the type of case that can be handled
16 on an expedited basis with streamlined procedures. Defendant TruePosition takes the position
17 that this is not the type of case that can be handled on expedited bases with streamlined
18 procedures, for among other reasons, the individual defendants have not yet been served..

19 **17. Scheduling:** The parties propose the following schedule: last day to designate
20 experts – July 31, 2008; last day to conclude discovery, including expert discovery –
21 September 15, 2008; last day to hear dispositive motions – November 30, 2008; pretrial
22 conference/trial – January 15, 2009.

23 **18. Trial:** Plaintiff has requested a jury trial. Plaintiff anticipates that the trial will last
24 3-5 court days.

25 **19. Disclosure of Non-party Interested Entities or Persons:** Plaintiff, TruePosition
26 and S.Com all have filed a "Certification of Interested Entities or Person" required by Civil
27 Local Rule 3-16. Plaintiff is unaware of any persons or other entities to have either a financial
28 interest in the subject matter in controversy or in a party to the proceeding; or any other kind of

1 interest that could be substantially affected by the outcome of the proceeding. The
 2 Certifications for TruePosition and S.Com specified that the following persons, associations or
 3 persons, firms, partnerships, corporations (including parent corporations) or other entities are
 4 known to have a financial interest in the subject matter in controversy or in a party to the
 5 proceeding, or to have an interest that could be substantially affected by the outcome of the
 6 above-captioned lawsuit: 1) for TruePosition – Liberty Media Corporation; Liberty Capital,
 7 and 2) for S.Com – Carlisle Group Limited, a UK company that trades on the London Stock
 8 Exchange.

9 **20. Other matters:** Not applicable.

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 12 DATED: 2/29/08

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 14 By: s/ Valerie Toohey O'Dell
 15 O'Dell & O'Dell, LLP
 16 Attorney for Plaintiff
 17 GLADYS GUTIERREZ

18
 19
 20 DATED: 2/29/08

21 By: s/ Cecily A. Waterman
 22 Morgan Lewis & Bockius LLP
 23 Attorney for Defendant TruePosition

24 DATED: 2/29/08

25 By: s/ Stephen H. Dye
 26 Schnader, Harrison, Segal & Lewis LLP
 27 Attorney for Defendant S.Com
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